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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,937	10/21/2003	Luciano A. Gonzales	054034-1US (34111-0489)	4058

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AKIN GUMP STRAUSS HAUER & FELD L.L.P.
ONE COMMERCE SQUARE
2005 MARKET STREET, SUITE 2200
PHILADELPHIA, PA 19103

EXAMINER

UPTON, CHRISTOPHER

ART UNIT	PAPER NUMBER
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1724

MAIL DATE	DELIVERY MODE
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05/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/689,937

Applicant(s)

GONZALES ET AL.

Examiner

Christopher Upton

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-33 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 11-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 22-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

1. Applicant's arguments with respect to the restriction requirement with respect to claims 26-29, 31 and 32 are persuasive, and the requirement has been withdrawn. No additional argument was made with respect to the species restriction requirement, and therefore this requirement remains final. Claims 9 and 11-21 remain withdrawn from consideration as being drawn to a non-elected species.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 22-24, 26, and 31-33 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gannon et al ('639).

The Gannon '639 patent discloses a separator for oil comprising a layer of oil absorbing material under a layer of crushed stone or other sediment, with the layers separated by water permeable layers, as claimed. It is submitted that the stones obviously act as an oil adsorbing material, as sand and gravel are disclosed as having adsorbing properties, and all are particulate rock materials. Additionally, gravel is a form of crushed stone.

4. Claims 1-4, 22-24, 26, 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Morris or Bamer.

Morris and Bamer each disclose containers having two layers of oil sorbing materials separated by permeable layers, as claimed. With respect to the recitation of an upper adsorbent material, it is submitted that the material of Morris would obviously perform both functions, due to its hydrophobic nature as well as its absorptive properties; and that Banner discloses the use of both adsorbents such as diatomaceous earth, vermiculite, nylon, polypropylene and oyster shells as well as absorbents such as activated carbon, perlite, fibrous cellulose and cotton. With respect to the recitation of an oil containing vessel, it is submitted that this is intended use language failing to limit the claims.

5. Claims 1-8, 22-25 and 26-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Ross et al.

Ross discloses a multi-layer filter having a fire retardant material (gravel) over an adsorbent (peat) and an absorbent (wood ash), and an aggregate (gravel), each of which is separated by a permeable geotextile membrane, as claimed. With respect to the recitation of an oil containing vessel, it is submitted that this is intended use language failing to limit the claims.

6. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ross in view of Gannon ('639 or '390).

Claim 33 differs from Ross in recitation of positioning the containment basin beneath and around an oil containing vessel. It is submitted that it would have been obvious for one skilled in the art to adapt the separator of Ross to such a purpose, in view of the teaching of similar separators being so used by the Gannon patents.

7. Applicant's arguments filed on 1/22/2007 have been fully considered but they are not persuasive.

Applicant argues that the '639 Gannon patent does not disclose distinct layers separated by permeable membranes or fabric. It is submitted that Gannon discloses such a separator between the layers of the mixed absorbent and filtration enabler and an upper layer of crushed stone. This layer of crushed stone would inherently have oil adsorbing properties, as it is a particulate rock material.

In addition, applicant's arguments with respect to claims 1-8, 22-25 and 26-33 have been considered but are moot in view of the new ground(s) of rejection, Morris, Bamer and Ross.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Other references of interest include Baker, Curati and Di Amico.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Upton whose telephone number is 571-272-1169. The examiner can normally be reached on 7:30-5:00, off every other Monday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to be 'CU' followed by a stylized flourish.

Christopher Upton
Primary Examiner
Art Unit 1724